



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6622 OF 2022

Khalil Khan Mustafa Khan,
Age: 48 years, Occu: Service,
R/o. Near National High School,
Bhusawal Dist - Jalgaon.

....Petitioner

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Co-operation Department,
Mantralaya Mumbai - 32.
2. The District Deputy Registrar,
Co-operative Societies Jalgaon,
At Jalgaon.
3. The Assistant Registrar,
Co-operative Societies Bhusawal,
At Bhusawal.
4. The Santoshi Mata Merchant Co-operative,
Credit Society Ltd.
Bhusawal Tq. - Bhusawal,
Dist - Jalgaon
Through its Manager.
5. The Santoshi Mata Merchant Co-operative,
Credit Society Ltd.
Bhusawal Tq. - Bhusawal,
Dist. - Jalgaon,
Through its Special Recovery Officer.Respondents

Appearance :

Mr. A. G. Talhar, Advocate for the Petitioner.

Ms. A. S. Deshmukh, AGP for Respondent Nos.1 to 3 - State

Mr. K. B. Jadhav, Advocate for Respondent Nos.4 and 5

CORAM : NEERAJ P. DHOTE, J.
RESERVED ON : 14th November, 2025
PRONOUNCED ON : 1st December, 2025

FINAL ORDER :

1. This Petition under Article 227 of the Constitution of India is directed against the order dated 26/06/2016 and consequent order of attachment dated 14/08/2018, passed by Respondent No.3 - Assistant Registrar and Respondent No.5 - Special Recovery Officer, respectively pursuant to the provisions of Section 101 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as 'the said Act') and Rule 107(10) of the Maharashtra Co-operative Societies Rules, 1961 (hereinafter referred to as 'the said Rules'), respectively.

2. The Petitioner, a businessman running a shop of ready-made clothes at Bhusawal, took a loan of Rs.10 Lakhs for business purpose from Respondent No.4 - Society on 16/06/2008. As the Petitioner failed to repay the loan, the Respondent No.4 - Society filed an Application before Respondent No.3 - Assistant Registrar for recovery of loan. The notices were issued to the Petitioner and the Guarantor in the said proceedings of recovery under Section 101 of the said Act. The Petitioner filed his response. By the impugned Order, the

Respondent No.3 - Assistant Registrar issued the recovery certificate against the Petitioner. Consequently, the attachment order came to be issued by Respondent No.5 - Special Recovery Officer. Being aggrieved by the same, the Petitioner approached this Court in this Petition.

3. Heard the learned Advocate for the Petitioner and the learned Advocate for the contesting Respondent Nos.4 and 5. Perused the papers on record.

4. It is submitted by the learned Advocate for the Petitioner that, though the Petitioner filed his response to the proceedings initiated by the Respondent No.4 - Society for recovery of loan, the Respondent No.3 - Assistant Registrar did not consider the same. The Petitioner had already repaid the loan, and therefore, the proceedings should not have been initiated. The Respondent No.4 - Society filed the proceedings against the Petitioner for the offence punishable under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as 'the N. I. Act'), which resulted in the acquittal of the Petitioner with the observations that, the pass book show that, the Petitioner / Accused therein has already paid the loan amount to the Society in the year 2008. Since there are

disputed questions of fact, the Respondent No.3 - Assistant Registrar will have no jurisdiction to entertain the proceedings under Section 10, and the only remedy was the dispute before the Co-operative Court. There was complete violation of Rule 86-F of the said Rules by the Respondent No.3 - Assistant Registrar. The impugned order and the consequent attachment order needs to be set aside and the Petition be allowed. In support of his contention, he relied on the Judgments in (i) **Bhanudas @ Suryabhan s/o Ramchandra Shinde Vs. State of Maharashtra and Others; 2022 DGLS (Bom.) 3927**, (ii) **Sonia Bhalchandra Godase and Others Vs. The State of Maharashtra and Others dated 04/11/2025, in Writ Petition No.18117/2024.**

5. It is submitted by the learned Advocate for the Respondent Nos.4 and 5 that, under the said Act, there is an alternate remedy to the Petitioner to file Revision Application under Section 154 of the said Act before the Joint Registrar, and without availing the said remedy, the Petitioner has approached this Court, and therefore, this Petition need not be entertained. The reply affidavit was filed on behalf of Respondent Nos.4 and 5. In response filed by the Petitioner to the proceedings under Section 101 of the said Act, there is no whisper that, the Petitioner has repaid the loan. The Petitioner was not present

before the Respondent No.3 – Assistant Registrar at the time of final hearing. No case exists to interfere with the impugned order and the Petition be dismissed. In support of his contentions, he cited the Judgments in (i) **Leelavathi N. and Others Etc. Vs. State of Karnataka and Others Etc.**; 2025 DGLS (SC) 1329, and (ii) **Tarulata Amritlal Bava Vs. State of Maharashtra and Others**; 2023 DGLS (Bom.) 25.

6. In *Bhanudas @ Suryabhan Ramchandra Shinde (Supra)*, this Court, by considering the previous Judgments, observed that, it is now a well established law that, if the proceedings before statutory authority are de horse jurisdiction, this Court would be justified in entertaining the writ petition under Article 226 of the Constitution of India even if alternate remedy is available.

7. In *Sonia Bhalchandra Godase and Others (Supra)*, the Petition was directed against the order and recovery certificate under Section 101 of the said Act and similar point of alternate remedy was raised. This Court considered the matter by observing that, the order impugned was without any reasons and the recording of reasons is one of the important facet of the principles of natural justice and entertained the Petition and set

aside the order impugned therein and relegated the matter to the concerned Registrar.

8. In *Leelavathi N. and Others Etc. (Supra)*, the subject matter was the service matter and the issue of entertaining the writ petition despite availability of alternate remedy was for consideration and it was observed that, in a service dispute covered by the Administrative Tribunals Act, 1985, it will not be open for the litigant to directly approach the High Courts. The various previous Judgments are considered therein and it is observed that, nevertheless, a writ petition under Article 226 may still be maintainable notwithstanding the existence of such an alternative remedy in exceptional circumstances, including the enforcement of fundamental rights guaranteed under Part III of the Constitution; instances of ultra vires or illegal exercise of power by a statutory authority; violation of the principles of natural justice; or where the vires of the parent legislation itself is under challenge.

9. In *Tarulata Amritlal Bava (Supra)*, the challenge in the Writ Petition under Article 227 of the Constitution of India was the recovery certificate issued by the concerned Deputy Registrar and the objection of alternate remedy was raised and

considered. The observations made in the said Judgment show that, the Petitioner therein had already availed the remedy of Revision and also filed the Writ Petition and it was held that, the proceedings under Articles 226 and 227 of the Constitution of India would be untenable when already recourse to remedy of Revision was availed by the Petitioner.

10. Coming to the case at hand, one of the Petitioner's contention is violation of principles of natural justice while passing the impugned order. In Paragraph No.8 of the Petition, it is specifically averred that, on 29/02/2016, the Respondent No.3 - Assistant Registrar directed to produce the original passbook, however further date of hearing in the proceedings was not given and on 03/06/2016, the Respondent No.3 - Assistant Registrar issued notice to the Petitioner and directed to remain present, however the date of hearing was shown blank in the said notice. The said contention in Paragraph No.8 is responded to by the Respondent Nos.4 and 5 in their Affidavit-in-Reply by stating that, the contents of Paragraph No.8 were not true and correct and sufficient and proper opportunity was granted to the Petitioner. Copies of *Roznama* of the proceedings under Section 101 of the said Act before the Respondent No.3 - Assistant Registrar are enclosed to the Petition. Perusal of the *Roznama*

dated 29/02/2016 show that, the said contention of the learned Advocate for the Petitioner that, no further date was given in the proceedings, is well founded. The *Roznama* dated 10/06/2016 notes that, the Borrower, the Guarantor, and the Advocate were absent, and it speaks of the final notice by Registered Post A.D.

11. Perusal of the impugned order show that, in first Paragraph, there is mention of the dates on which the proceedings were kept, and appearance of the parties, providing the copy of the account statement to the learned Advocate for the Petitioner and absence of the Petitioner, the Guarantor at the time of hearing. The second Paragraph speak of public notice published in the news papers pursuant to the directions of this Court in another Writ Petition, which, according to the learned Advocate for the Petitioner was in respect of dealing the matters by the Assistant Registrar of the next station due to the unavailability of the Assistant Registrar at the concerned Station, and presence of the Petitioner and his Advocate on 29/02/2016 with their contention that, the loan was made nil, which was controverted by the Advocate for Respondent No.4 – Society and further that, the final hearing notice dated 10/06/2016, on which date, the Petitioner and his Advocate were absent and Respondent No.5 – Special Recovery Officer was

present and that as per the account statement, the loan was unpaid and was responsibility of the Petitioner to repay the loan and passed the operative order.

12. There is no dispute that, the Petitioner had filed his written response before Respondent No.3 – Assistant Registrar to the proceedings under Section 101 of the said Act and also filed his written objection in respect of maintainability of the proceedings for recovery under Section 101 of the said Act. However, the impugned order nowhere refers to the same. The provision of Rule 86-F of the said Rules provides for reasoned Judgment and order for the grant or rejection of the Application under Section 101 of the said Act. On going through the impugned order, it is clear that, it is sans reasons and not in conformity with the said rule. Further, the impugned order is passed without hearing the Petitioner. This indicate that, for want of knowledge of the next date in the proceedings, as no next date was shown in the Roznama dated 29/02/2016, the further proceedings were in absence of the Petitioner. Under such circumstances, the objection raised by the learned Advocate for Respondent Nos.4 and 5 in respect of dismissing the Writ Petition on the ground of alternate remedy cannot be accepted. In the light of the aforesaid aspects in the matter, the impugned

order and consequent attachment order are unsustainable in law. Without going into the merits of the matter, the appropriate course is to relegate the matter to the Respondent No.3 – Assistant Registrar for re-consideration and decision in accordance with law. Hence, the following order:

ORDER

- (I) The Writ Petition is partly allowed.
- (II) The impugned order dated 26/06/2016 and the consequent order of attachment dated 14/08/2018, are quashed and set aside.
- (III) The matter is remanded back to the Respondent No.3 – Assistant Registrar for re-consideration after hearing both the sides and deciding the same, in accordance with law within a reasonable period.
- (IV) The parties shall appear before the Respondent No.3 – Assistant Registrar on **8th December, 2025**.
- (V) Writ Petition stands disposed off accordingly.

[NEERAJ P. DHOTE, J.]

Sameer/November-2025